

In re) Fair Hearing No. 11,241
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Appeal of)

The petitioner appeals the Department of Social Welfare's determination that she is not eligible for the Reach Up program due to her wage earning capacity.

1. The petitioner receives ANFC for herself and her two children, aged twelve and sixteen. She was divorced eight years ago and received a support award from a court which has only sporadically been paid on by her ex-husband. Her only source of income at present is her ANFC benefits.

2. Prior to going on ANFC three and a half years ago, the petitioner worked as a sales clerk at a large department store in the fabric department. She shipped and received orders and made display items for the store. She left that job in December of 1988 to go to college because she did not feel that the \$5.00 per hour she made there was sufficient to support her family. By that time the petitioner had over five years of experience in retail sales.

3. The petitioner enrolled as a marketing student at a junior college shortly after she went on ANFC. In May of 1989, the petitioner was accepted into the Reach Up program

under which the Department of Social Welfare agreed to provide support (child care, clothing, transportation, and educational supplies) for her fall semester courses. She was reapproved for the spring of 1990, fall of 1990 and the spring of 1991.

4. In January of 1991, the petitioner changed her educational goal from an associate's to a master's degree. She made this change because she felt she needed further education to get a well-paying job. Pursuant to the Department's policy, she was required to fill out a new educational plan. That plan indicated that the petitioner was interested not only in a master's degree but that she was interested in doing human services work. The petitioner's plan was approved on February 8, 1991 but Reach Up funding was approved only through the receipt of her associate's degree. The petitioner did not appeal that decision.

5. After several internships and two years of coursework, the petitioner obtained her associate's degree in marketing in May of 1991. In the summer of 1991, she enrolled in a four year college where she continues to study towards her bachelor's degree which she expects to receive in the spring of 1993.

6. The petitioner did not receive Reach Up services after receiving her associate's degree. In the spring of 1992, the petitioner reapplied for Reach Up benefits. On May 5, 1992, the petitioner was notified that she had been

determined to be ineligible for Reach Up because she had the capacity to earn 125 percent of the poverty guidelines. The petitioner appealed that decision.

7. The petitioner does not dispute the Department's calculation that 125 percent of the federal poverty guideline for a family of three is \$14,462.50 per year. Based on a forty hour work week, the hourly wage needed to reach that annual figure is \$6.94. The Department stated that to reach this figure it performed an assessment of the petitioner's earning capacity based upon policies which it has adopted and which are attached hereto as Exhibit One and incorporated herein by reference.

8. At hearing, the Department presented the testimony of a job placement specialist from the Department of Employment Security that it was his opinion that the petitioner's experience and education qualified her for a sales position earning at least \$6.94 per hour. The expert relied in part upon a Vermont DET survey of hourly wages published in March of 1990 showing that retail sales clerks at that time earned from \$5.70 per hour to \$8.29 per hour with the average being \$7.89. He stated that no newer surveys had been done, but based on his experience, wages today were at least as high and maybe a little higher than those in 1990. It was his opinion that the low end of \$5.70/hour represented an entry level job for an inexperienced person with a high school degree only. He felt that the petitioner's five years of experience in sales

and associate's degree in marketing probably qualified her for the average wage of \$7.89. He cited two sales or manager trainee jobs currently available at DET for which he felt the petitioner was qualified. The first was a sales trainee job which required no experience but paid \$1,500.00 per month (\$8.65 per hour). The second was a management trainee job which paid \$365.00 a week and required six months of experience (\$9.12 per hour). Neither job required a college degree. By contrast, he cited what he considered to be an entry level assistant sales manager position which required no experience and no college degree which paid \$6.00 per hour. He felt the petitioner was over qualified for that job. None of these three currently available jobs was in fashion merchandising, but he felt that her skills in that area would be easily transferable to other areas of sales. He also felt that her associate's degree in merchandising would be attractive to employers as a sign of her seriousness and motivation in this area. While there are not as many of these jobs available now as in better economic times, the specialist testified that even in this economy, there are several of these positions available at any given time. The specialist is found to be an expert in this field and the methodology he employed is found to be reasonable although not that specifically called for by the Department's policy.

9. The petitioner has not engaged in a job search since she began college in 1989. It is her impression,

however, from visiting her college placement office shortly after getting her associate's degree that the jobs for which she was qualified paid in the \$5.00 to \$5.50 range. She pointed also as evidence the \$5.00 finishing wage she received at her last job in 1988. The petitioner, who appeared pro se, was given an opportunity to obtain other evidence supporting her assertions through two continuances.

It was suggested to the petitioner that a possible source of expert information was her junior college's placement officer. The petitioner was, however, unable to obtain supporting information from this source or any other (such as a newspaper or placement ads).

10. Based on the above, it is found that the petitioner's earning capacity is at least \$6.94 per hour and more likely closer to \$7.89 per hour. Although the petitioner requested and was given ample time (several months) to obtain some rebuttal evidence of her earning capacity, she failed to present any. Although her last earning rate three and a half years ago (\$5.00/hour) is relevant, the petitioner has had three more years of education and earned an associate's degree specifically geared towards the marketing area which would (according to credible testimony offered by the DET expert) have a significant impact on her ability to earn. It is fair to conclude from the evidence that the petitioner is actually unaware of her specific current earning ability and has totally discounted her education in her estimates. She has

made a decision, however, to continue her education because even if she could earn \$6.97 per hour, she believes that figure is too low to support her family.

ORDER

The Department's decision is affirmed.

REASONS

The Reach Up program is Vermont's federally approved plan implementing the Job Opportunities and Basic Skills program established by Title II of the Family Support Act of 1988. According to the Department's regulations, "Reach Up is a work and training program for members of ANFC families which promotes long-term independence from welfare. It provides them with the program activities and support services necessary to become self-sufficient and fulfill their responsibilities to provide financial support for their children." W.A.M. § 2340.1

Although the program has a broadly stated mission, its regulations place restrictions on participation primarily due to financial constraints. One of the classes of persons who may be denied "Reach Up Services" is persons who can earn wages which can bring the family's income slightly (25 percent) above poverty level. The regulations specifically state:

Otherwise eligible ANFC applicants or recipients who volunteer for participation in Reach Up may be denied the opportunity to participate for one or more of the following reasons:

. . .

2. The applicant or recipient has already completed an educational or vocational training program which has prepared him or her for entry into an occupation that would provide earnings which, in combination with the family's other income (including the potential earnings of the applicant or recipient and those of the second parent or other caretaker relative's spouse), would provide the family with an income above 125 percent of the applicable federal poverty line.

In determining family income in these instances all cash and in-kind earned and unearned income and available benefits (including benefits for which the family is eligible but which are not received, such as Food Stamps, Fuel Assistance, federal and Vermont Earned Income Tax Credits, Property Tax and Renters Rebates, SSI/AABD benefits, etc.), including potential earnings, shall be counted with the following exceptions: no value will be attributed to receipt of Medicaid coverage, the value of housing or utility subsidies, and the value of SRS Child Care program subsidies.

This reason shall not be the basis for denial of participation in Reach Up if the applicant or recipient is no longer able to engage in the occupation for which he or she was educated or trained.

3. The applicant or recipient has a work history which demonstrates his or her capacity to provide earnings which, in combination with the family's other income (including the potential earnings of the applicant or recipient and those of the second parent or other caretaker relative's spouse) would provide the family with an income above 125 percent of the applicable federal poverty line. Family income shall be determined using the same method as described under 2 above.

This reason shall not be the basis for denial of participation in Reach Up if the applicant or recipient is no longer able to engage in the job(s) which are included in his or her work history and which provided the level of earnings described above.

W.A.M. § 2340.2

Postsecondary education specifically can be an approved and supported Reach Up activity if neither of the following

conditions applies:

. . .

- A. The individual has already completed an educational or vocational training program which has prepared him or her for entry into an occupation that would provide earnings which, in combination with the family's other income (including the potential earnings of the individual and those of the second parent or other caretaker relative's spouse), would provide the family with an income above 125 percent of the applicable federal poverty line.

In determining family income in these instances all cash and in-kind earned and unearned income and available benefits (including benefits for which the family is eligible but which are not received, such as Food Stamps, Fuel Assistance, federal and Vermont Earned Income Tax Credits, Property Tax and Renters Rebates, SSI/AABD benefits, etc.), including potential earnings, shall be counted with the following exceptions; no value will be attributed to receipt of Medicaid coverage, the value of housing or utility subsidies, and the value of SRS Child Care program subsidies.

This reason shall not be the basis for denial of participation in postsecondary education if the individual is no longer able to engage in the occupation for which he or she was educated or trained.

- B. The individual has a work history which demonstrates his or her capacity to obtain employment that provides earnings which, in combination with the family's other income (including the potential earnings of the individual and those of the second parent or other caretaker relative's spouse), would provide the family with an income above 125 percent of the applicable federal poverty line.

Family income shall be determined using the same method as described under A. above.

This reason shall not be the basis for denial of participation in postsecondary education if the individual is no longer able to engage in the job(s) which are included in his or her work history and which provides the level of earnings described above.

W.A.M. 2344.2(A)(B)

When an ANFC recipient applies for postsecondary training under Reach Up, the Department has adopted a policy of performing an "earnings capacity assessment" (Exhibit One) which, among other things, requires a determination of the earnings capacity of all adults included in the ANFC grant. Workers are instructed by written policy to "Use Quarterly Report of Job Openings to estimate wages for the job title for which the parent has completed the required training and/or for which his/her work history demonstrates he or she is qualified to perform. Unless a parent is incapacitated, calculate his/her earnings based on forty hours of work per week unless the local industry standard for full-time employment in the applicable job title is lower than forty hours per week. Use gross (before taxes) earnings; don't deduct child care expenses. (It is assumed at this point that Food Stamps and Fuel aid would more than compensate for the fee the family would need to pay for SRS subsidized child care.)"

This and the family's income is then added together and compared to a threshold table with figures comparable to ANFC amounts. If that threshold to eligibility is not passed, an Earned Income Tax Credit is added in and the total amount is then compared to a poverty threshold level chart.

The issue here is whether the petitioner, who has already received some help with postsecondary education

through Reach Up can now earn an hourly wage (adjusted for the addition of EITC benefits) which is greater than 125 percent of the poverty line.

In making its assessment, the Department did not use a Quarterly report of wages because none was available. What it used was a 1990 annual report of Vermont wages and the expertise of the DET job placement specialist. Predicting salaries is not an exact science but it cannot be said that the methodology used by DET (basically, base income for 1990 adjusted for the petitioner's experience and education) is patently unreasonable. The petitioner was given an opportunity to show that the Department's estimate was wrong but was unable to do so. Her contention that she should be found able to make only \$5.00 per hour based on her finishing salary almost four years ago totally discounts the effect that three years of postsecondary education, which included courses and internships in retail sales, might have upon her ability to earn. It also ignores the fact that starting salaries in her field even two years ago were already at \$5.70 per hour.

As the petitioner's reasonably assessed earning capacity is greater than 125 percent of a three person family's poverty level income, (even before adding the EITC), the Department's decision is correct that she cannot receive assistance with further postsecondary training. This outcome, however legal, is undoubtedly a bitter disappointment for a highly motivated person like the

petitioner who is probably right that she and her children will continue to be dependent on welfare or live close to a complete poverty level if she cannot get the education she needs to make a wage even better than \$6.94 per hour. It would be tragic, indeed, if she were forced to drop out of college so near to her goal of a bachelor's degree because she could not get some assistance from a program which has as a goal assisting persons to become independent of welfare. While her position is very sympathetic, the Department's decision in this case is based upon policy and financial decisions which are not in the hands of the Board.

As long as those decisions are legal, which they appear to be here, the Board is constrained to uphold the Department.

3 V.S.A. § 3091(d), Fair Hearing Rule 19.

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